

Re: Docket 08-172

To Whom it May Concern:

I am writing today to oppose the notice of proposed rule making in regards to mandating the inclusion of DAB (HD) radio into Satellite Radio (SDARS) receivers.

Throughout the merger proceedings of Sirius and XM Satellite Radio, iBiquity cooperation submitted multiple filings requesting the mandatory inclusion of HD radio into Satellite Radio receivers. These ideas were then echoed by the National Association of Broadcasters (NAB), a number of Senators, Congressmen, and even Attorney Generals. The primary problem with this rests in a number of sticky situations.

- 1) Is HD reception something that is desired?
- 2) Who will ultimately end up paying the cost of this type of inclusion?
- 3) If the inclusion of HD into Satellite Radio receivers is mandated, what other types of mandates should be made?

1) Is HD reception something that is desired?

In my opinion, when the FCC accepted the proposal of Sirius and XM to make their spectrum open to developers with their "Open Access" policy, the FCC left manufactures to answer this question. The FCC strictly prohibited the combined Sirius XM Radio from restricting any manufacture from including any other technology, including HD radio, from future receivers. Open Access is around specifically to allow manufactures to include what the consumer wants if the price is right. If HD radio is demanded by the consumer, then it will be included in future radios, however, if the demand is not there, there would be no incentive for manufactures to include the technology. The FCC does not need to mandate inclusion; the consumers who will be listening and purchasing these devices need to mandate it.

2) Who will ultimately end up paying the cost of this type of inclusion?

Over the past 10-15 years, the government has channeled hundreds of millions of dollars into the HD radio push. At the same time, not a penny has been given to Sirius Satellite Radio or XM Satellite Radio as individual companies, and that remains true today for the combined Sirius XM Satellite Radio entity. Regardless of this fact, during the Sirius XM merger, iBiquity never once attempted to negotiate a contract directly with Sirius XM, nor did they ever offer to pay their own way in FCC filings. The fact stands that Sirius XM at this point in time are forced to provide subsidy for the creation and installation of their radios into Original Equipment Manufacturers (OEMS) as well as a revenue share in order to get their products placed into vehicles. In addition to these payments, the combined Sirius XM Radio also pays royalties to the Recording Industry Association of America (RIAA) in order to play the music that consumers hear on Satellite Radio. These are all costs that the current HD radio alliance, as well as traditional terrestrial AM and FM stations do not have to pay. Should Sirius XM be forced to pay for the

inclusion of HD radio as well? Regardless of which company pays for the inclusion of HD radio, these costs will be passed on to the consumer in the form of a higher price tag, higher subscription rates, or additional advertising and it is the consumer that loses. The forced inclusion of HD radio is not in the public interest.

- 3) If the inclusion of HD into Satellite Radio receivers is mandated, what other types of mandates should be made? In a Comment to the FCC filed on the ECFS system dated 8/27/08, Aaron Read states,

“In their arguments for a waiver of FCC SDARS ownership rules to allow them to merge, XM and Sirius argued that as a service, SDARS competes more with other media technologies than they do with each other. This premise is fundamentally flawed unless every SDARS consumer, by definition, is able to use the same device to access other media technologies.”

This logic is what is fundamentally flawed. The fact that you do not have access to something on a single device does not mean that they do not compete. If that was true, then Sirius and XM never competed because you could not access both services on a single device. That would mean that terrestrial radio does not compete with iPods or CD players because many devices do not include those capabilities.

The fact is that all forms of Audio Entertainment compete for listenership, regardless of the business model. If the FCC can mandate that all receivers capable of receiving SDARS must also receive HD, then I think that the FCC should also mandate that all receivers capable of getting Terrestrial AM/FM should have to receive SDARS.

If the FCC mandates the inclusion of HD radio reception into Satellite Radio receivers, what is next? Perhaps the FCC could mandate that any device that plays music must have the ability to pick up terrestrial and HD radio, satellite radio, play CDs, MP3s, 8-tracks, and have Wi-Fi capability to access internet feeds, and make phone calls.

The proposition that the government can mandate a company's business model is absurd, ridiculous, and un-American. People have not been buying HD radio because it is a failed technology with more problems than iBiquity Corp. would ever admit to and has no desire to fix. For the FCC to mandate a failed technology which refuses to support itself and instead is supported by the government would be hypocritical and a mockery of common sense. The fact that this discussion has come this far only goes to prove the power of terrestrial radio over the United States Government. It is time to let a failed technology die the horrible death that it deserves, and let Satellite Radio thrive like it deserves.

Disclosure: I am a shareholder of Sirius XM Radio Inc (SIRI) as well as a faithful listener of XM Satellite Radio who does not want to pay extra to have this failed technology in my dashboard.

Brian Rayl
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